KENYA

TRADE SUMMARY

The United States and Kenya have maintained a fairly stable trading relationship for the past several years. In 1999, the U.S. trade surplus with Kenya totaled $83 million, down from $101 million the previous year. U.S. exports to Kenya totaled $189 million, a decrease of $10 million from 1998. In 1999, Kenya was the 92nd largest export market for the United States. Imports from Kenya totaled $106 million in 1999, an increase of $7 million from 1998. The stock of U.S. foreign investment in Kenya was estimated to be $238 million in 1998.

According to official Government of Kenya statistics, the Kenyan economy grew by 1.8 percent in 1998, down from 2.4 percent in 1997. According to most estimates, the economy performed worse in 1999. The government attributed this third consecutive economic slowdown to a number of factors, including poor infrastructure, high interest rates, a slump in tourism, and labor unrest. But investors pointed to corruption, an uncertain business environment, the high cost of doing business, and the lack of supplier competitiveness as reasons for the poor economic performance. Ineffective and corrupt enforcement of import policies exposes a wide range of businesses to unfair competition. In addition, there is little doubt that the IMF's 1997 decision to suspend the country's Enhanced Structural Adjustment Facility (ESAF) because of the government's poor track record on economic governance has also had a deleterious effect on investment. While the government remains publicly committed to continued trade liberalization and structural reform, issues of governance and the rule of law continue to erode investor confidence.

Despite its economic problems, Kenya has become an increasingly important hub for African trade, as is evidenced by the growing importance of African trading partners to Kenya. Kenya is a member of the newly formed East African Community and remains an active member of the WTO, COMESA, and IGAD. Kenya has been slow to honor its WTO commitments, including its implementation of the WTO Customs Valuation Agreement, TRIPS, and the Financial Services Agreement.

IMPORT POLICIES

The Government of Kenya has exhibited renewed interest in liberalizing trade and restructuring many of its most important industry sectors. In 1993, the government eliminated its export compensation scheme and abolished import licensing, except in certain health, environmental, and security areas. Tariffs are now the government's primary instrument for trade policy. The overall tariff structure has been simplified and though still quite high, many tariffs have been reduced.

In June 1999, the Government of Kenya announced an increase in import duty on all fruits and vegetables from 15 percent to 25 percent as a means of protecting local farmers. Similarly, the duty on textiles was increased from 25 percent to 30 percent. Duties on crude palm oil, vitamins, dyes, essential oils, some steel products, some basic chemicals, unassembled radios, and household refrigerators and washing machines were reduced to 10 percent. Duties on software were reduced from 15 percent to 5 percent (the same as for computer hardware). The Duty on capital equipment imported for investment in a foreign exchange earning business or for an investment worth more than 10 million Kenyan shillings ($140,000 at $1/KS71) was lowered from 10 percent to five percent, as was the duty on specialized cold storage equipment for farm use. The exemption of duty for power generation plants and equipment was extended through December 31, 2000, while specialized cargo handling equipment at the Port of Mombasa was exempted from duty and the VAT.

In addition to customs tariffs and fees, "suspended" (stand-by) duties ranging as high as 70 percent are imposed on some 17 percent of all tariff lines corresponding to the most protected manufacturing and agricultural sectors, including imports of maize, rice, wheat, sugar, and millet. The June 1999 changes also included the imposition of suspended duties of 25 percent on imports of barley and malt. Since 1994, refined oil products have been freely imported, but subjected to high duties to protect the national oil refinery.

In early 1996, the Government of Kenya, citing environmental standards, effectively banned commercial seed imports by requiring that all approved seed be grown in Kenya. Though the ban was later lifted, the government still carefully controls imports of seed corn. The Ministry of Agriculture restricts international seed trade by setting quantitative ceilings on cereal seed imports and subjecting hybrid varieties to a tedious certification process that effectively restricts trade.

Pre-Shipment Inspection

Import shipments with an F.O.B. value of more than $5,000 must undergo pre-shipment inspection (PSI). Shipments originating from the United States are inspected by COTECNA Inspection, a Swiss Firm. In addition to a "Clean Report of Findings" (CRF) certifying that the goods are consistent with the invoice, the inspection agency also furnishes a "valuation certificate" or bill of lading that enables the Government of Kenya to determine the correct duty. The import declaration fee, which includes a PSI fee, is 2.75 percent of the export (F.O.B.) value. If imports fail to obtain an advance inspection, a 15 percent penalty (25 percent for motor vehicles) is applied for local inspection. Goods airlifted by courier services are not subject to PSI if their value does not exceed $10,000.

On January 1, 2000, the Government of Kenya started implementing the WTO Customs Valuation Agreement. Under the agreement, Kenya must use the transaction value (i.e., the invoice value) for customs valuation of goods imported from other WTO signatories. For non-WTO members, Kenya will continue to use its PSI system of valuation.

Other Fees and Charges

In addition to the import declaration fee of 2.75 percent of F.O.B. value, agricultural imports are charged a fee of one percent of C.I.F. value to support the Kenya Plant Health Inspectorate Service (KEPHIS). The Kenyan Bureau of Standards charges an inspection fee of 0.2 percent of C.I.F. value on all imports.

STANDARDS, TESTING, LABELING AND CERTIFICATION

The Kenya Bureau of Standards (KBS), a government regulatory body under the Ministry of Industrial Development, inspects imports to ensure conformity to International Standardization Organization (ISO) and other product standards. KBS is in the process of reviewing all standards, especially those more than 10 years old. About 500 standards still need to be reviewed. KBS also conducts product testing for individual product categories and undertakes certification. Products that do not meet KBS standards are withdrawn from the market and the importer is prosecuted. As of July 1997, the Weights and Measures Act required that a list of twenty different products be labeled with metric measurements and packaged in even units (e.g., 2.5 liters, not 2.51). Shipments in violation of these rules may not be re-exported. KBS levies an inspection fee of 0.2 percent of C.I.F. value.

Certain imported agricultural goods are subject to further inspection by the Kenya Plant Health Inspectorate Service (KEPHIS). KEPHIS regulates the importation and exportation of plant materials and the trade in bio-safety control organisms in accordance with the International Plant Protection Convention (IPPC). The Inspectorate evaluates commercial hybrid grain seeds for a period of three years before the seeds can be released to market. This certification process is tedious and restrictive, and the three-year period needed for the government to approve or reject a variety is a timetable that effectively restricts trade. KEPHIS levies an inspection fee of one percent of C.I.F. value.

GOVERNMENT PROCUREMENT

According to government regulations, goods worth more than $4,000 must be purchased through open competitive tenders. Conflict-of-interest regulations are not enforced, however, and government contracts are frequently awarded to uncompetitive firms with connections to government officials. The award of some of the largest government contracts, including those for an international airport in 1994 and for a presidential jet in 1995, noticeably lacked transparency. Since September 1999, the government has taken measures to make the public procurement process more transparent. These measures have included affording wider publicity to government tenders, establishing an appeals committee, and appointing people from the private sector to the Central Tender Board, the main decision-making agency for large scale government purchases. Kenya is not a signatory to the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 1992, the government enacted a duty/value-added tax remission facility that enables firms in export-processing zones to purchase imported inputs tax free. Some firms in export-processing zones have utilized this facility to sell duty-free goods onto the domestic market and unfairly compete with local producers and other importers.

The government claims that it has discontinued below-market loans to export-oriented businesses. While no general system of preferential financing currently exists, sectoral government development agencies in areas such as tourism and tea are supposed to provide funds at below-market rates to promote investment and exports by Kenyans.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Kenya is a member of the World Intellectual Property Organization (WIPO) and the African Regional Industrial Property Organization, and is a signatory to both the Paris Convention on the Protection of Industrial Property and the Berne Convention on the Protection of Literary and Artistic Works. Although a unified system for the registration of trademarks and patents from Anglophone Africa was agreed to in 1976, the effort has not been effective due to the lack of coordination and funding. Future protection may be afforded through the African Intellectual Property Organization, but member cooperation and enforcement procedures are untested.

As a member of the WTO, Kenya must implement the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The government has initiated steps to amend the country's intellectual property laws to bring them into conformity with WIPO guidelines, the TRIPS Agreement, and other international conventions. In 1999, the government presented the Industrial Property and Trademark Acts to Parliament.

The Kenyan Copyright Act protects audio as well as video recordings. Violations are subject to a fine of up to $3,600 or imprisonment for five years, or both. In practice, however, the Office of the Attorney General (which is responsible for copyright matters) and the police seldom enforce the laws. Pirated sound recordings are common, and virtually all videos available in shops are unlicensed. A new Copyright Act, designed to be compliant with WIPO and international standards, has been drafted and circulated to stakeholders.

Kenya was to have joined the Union for the Protection of New Varieties in Plants (UPOV) in 1999. However, the country is not yet a signatory of the UPOV Convention on Plant Variety Protection and its laws do not conform to international regulations.

SERVICES BARRIERS

No explicit barriers exist on the provision of services by U.S. professionals. For example, a U.S. bank prepared the flotation of shares by Kenya Airways and a U.S. life insurance firm is the leader in its industry sector. Nevertheless, foreign companies offering services in construction, engineering, and architecture may face discrimination on tenders for public projects. In addition, new foreign investors with expatriate staff are required to submit plans for the gradual elimination of non-Kenyan employees. In 1999, the government increased fees and security bonds under the Immigration Act by 50 percent to 100 percent in an attempt to discourage the employment of foreign labor. Fees for foreign students were excluded from this increase. The Kenyan bar has declined to admit foreign lawyers for a duration of more than 12 years.

The only privatizations of note since 1995 have been the sale of state-owned tourist facilities and the flotation of shares of state-owned financial institutions on the Nairobi Stock Exchange. The government plans to privatize the Kenya Reinsurance Corporation in CY2000, and is moving to liberalize the telecommunications, power, and transport sectors.

INVESTMENT BARRIERS

With macroeconomic stabilization and gradual economic reform paving a wider road for the private sector, Kenya may succeed in attracting the foreign investment it needs to fuel higher economic growth. Much depends upon whether the government continues sector reform, trade liberalization, and anticorruption measures. So far, tight fiscal policies have brought inflation under control. The financial system has been restructured and measures taken to increase the role of the private sector and establish greater accountability and transparency with respect to financial infractions. A managed floating exchange rate regime has been adopted and companies may now retain foreign exchange earnings and repatriate capital and profits without certification. The government has identified more than 200 parastatals for privatization and another 33 for restructuring. In addition, the government has established an independent anticorruption authority and recognizes the importance of dealing with governance issues. Nevertheless, Kenya suffers from lackluster investor interest caused by the high cost of doing business, lack of supplier competitiveness, an uncertain business environment, and corruption.

Restrictions and Regulatory Practices

The Government of Kenya has placed a number of restrictions on foreign ownership for publicly traded companies and in the areas of financial services and telecommunications. Foreign ownership of firms listed on the Nairobi Stock Exchange cannot exceed 40 percent for corporations and five percent for individuals. Foreign ownership of local telecommunications companies is also restricted to 40 percent. Life insurance companies are required to have at least 33 percent local ownership. Foreign brokerage and fund management firms must be locally registered companies; in which case, fund management firms must be at least 30 percent Kenyan owned and brokerage firms 51 percent.

Internet Service Providers (ISP's) also operate in Nairobi under significant restrictions. As telecommunications companies, foreign ownership of an ISP is restricted to 40 percent. The Communications Commission of Kenya (CCK), the regulatory authority, limits the number of ISP's and prohibits them and other carriers from establishing switches, international gateways, or direct satellite links. This has forced continued dependency on Telkom Kenya and inhibited competition and improvements in customer service. The CCK specifically prohibits ISP's from providing the following services: voice telephony, uploading of telecommunications traffic by satellite, and use of wireless communications. In fact, ISP's must agree, in writing, not to provide Internet protocol telephony through their networks (paging services are excluded from this requirement). ISP's must also provide the CCK with information on what they charge for all services, as well as the names and addresses of their clients. CCK must also type-approve equipment that ISP's provide to clients. These regulatory practices make investing in this area considerably less attractive than it might otherwise be. The CCK regulates telecommunications and radio communications in the country (a role similar to the FCC in the United States), as well as postal services.

Difficulty in obtaining clear title to land, lack of confidence in the speedy and fair resolution of disputes, and requests from officials for illicit payments continue to dampen the country's prospects to attract greater foreign investment.

Technology transfer requirements and foreign exchange controls have been abolished. Local partners are encouraged but not required. Kenyan partners are no longer required for small-scale commercial enterprises.

Infrastructure

The Government of Kenya has been hesitant to open public infrastructure to competition because the state-owned companies that control infrastructure are considered "strategic" enterprises. For this reason, the reform and partial privatization of telecommunications, power, and rail has fallen behind schedule.

Under the Kenya Communications Act of 1998, which became effective in 1999, the Government of Kenya dissolved the Kenya Posts and Telecommunications Corporation (KPTC) on July 1, 1999. KPTC was succeeded by three separate entities: Telkom Kenya (telecommunications), Safaricom (mobile cellular services), and Postal Corporation of Kenya (postal services). As it stands, Telkom will be permitted to maintain its monopoly in segments of the telecommunications market for five years. Two firms have initially been licensed to provide mobile cellular telecommunications. In February 2000, the CCK issued a tender notice for eight regional telecommunications licenses to operate local and regional long-distance services in competition with Telkom Kenya.

At the beginning of 1997, the Kenya Power and Lighting Company (KPLC) was split into two entities: the Kenya Power Company (now renamed the Kenya Electricity Generating Company), responsible for power generation, and KPLC, responsible for electricity distribution. An electricity regulatory board was established in April 1998 to regulate retail tariffs and approve power purchase contracts between KPLC and producers. The government also licensed two independent power producers (IPP's) to sell electricity to the Kenya Electricity Generating Company. Questions were raised with respect to the procedures used in the award of IPP contracts.

The Kenya Railways Corporation has contracted for the maintenance of some of its locomotives to General Electric. The company may be commercialized further along these lines.

ELECTRONIC COMMERCE

Kenya has not yet formulated a policy on electronic commerce. There is, however, a national committee that is charged with handling electronic commerce issues.